

MAR 25 2008

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

MOLLY DWYER, ACTING CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

VARANISESE WAQA,
TANIELA GUKILAKEBA,
TALEI SOKOVE WAQA, and
TIMOCI SAISA WAQA,

Petitioners,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 05-70612

Agency Nos. A78-185-625
A78-185-626
A78-185-627
A78-185-628

MEMORANDUM *

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted March 18, 2008**

Before: CANBY, T.G. NELSON, and BEA, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Varanise Waqa and her family are natives and citizens of Fiji. They petition for review of the Board of Immigration Appeals' ("BIA") order dismissing their appeal from the immigration judge's ("IJ") decision denying their applications for asylum and withholding of removal. Our jurisdiction is governed by, 8 U.S.C. § 1252. We review for substantial evidence, *Molina-Estrada v. INS*, 293 F.3d 1089, 1093 (9th Cir. 2002), and we dismiss in part, and deny in part.

We lack jurisdiction to review the BIA's finding that changed circumstances did not excuse the Waqas' untimely filed asylum application because it was based on disputed facts. *See Ramadan v. Gonzales*, 479 F.3d 646, 650, 656-57 (9th Cir. 2007).

The record does not compel the conclusion that the Waqas' untimely filing due to the ignorance of the law should be excused because of extraordinary circumstances. *See* 8 C.F.R. § 1208.4(a)(5).

Substantial evidence supports the BIA's finding that the Waqa family failed to show that it is more likely than not that they will be harmed on account of their political opinion, ethnicity, gender, and/or religion if removed to Fiji. *See Hoxha v. Ashcroft*, 319 F.3d 1179, 1185 (9th Cir. 2003) (no compelling evidence that

05-70612

persecution of applicant's group was so widespread that applicant faced a clear probability of persecution).

The Waqas' contention that their due process rights were violated because the IJ did not permit them to apply for asylum until January of 2002 is belied by the record.

Finally, the Waqas' due process contention regarding the BIA's previous reduction of voluntary departure, and erroneous country of removal are moot in light of the BIA's amended order.

PETITION FOR REVIEW DISMISSED in part; DENIED in part.